IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 34059 of 1998

Between:

Vidala Suresh S/o Veera Raghavaiah
R/o.Suryapet Nalgonda Dist.

..... PETITIONER

AND

1 The Prohibition and Excise Superintendent
Nalgonda District at Nalgonda
2 The Prohibition and Excise Inspector
Prohibition and Excise Station, Suryapet,
Nalgonda Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction more particularly one in the nature of the Writ of Mandamus by declaring the registration of Crime No.4/98-99 on the file 2nd Respondent against the petitioner as illegal, arbitrary and void abinitio and also violative of Article 14, 21 of Constitution of India in the interest of justice and equity.

Counsel for the Petitioner: MR.J.ASHVINI KUMAR

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

The petitioner filed this writ petition seeking to quash the crime registered against him in Crime No.4/98-99 on the file of the second respondent for the alleged offences under Sections 7-A of the A.P. Prohibition Act read with Sections 8(e) and 34(e) of the A.P. Excise Act.

It is alleged that on 06-10-1998 excise officials raided the house of one Muluguri Durgaiah and found a mud pot containing 50 litres of jaggery wash, and on his confession they raided the shop of one Madugula Dayakar and found 9 bags of jaggery and one bag of alum. The said Dayakar is alleged to have stated that he purchased jaggery and alum from one Kotha Mallikarjun and the petitioner. It is stated that on the basis of the confession statements made by Muluguri Durgaiah and Madugula Dayakar, the second respondent implicated the petitioner in the crime without any just cause or reason. The petitioner states that there is no incriminating material against him. Hence, the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise.

The learned counsel for the petitioner submits that there is no incriminating material to register a crime against the petitioner. He submits that the petitioner is not doing any business of jaggery or alum and in fact he is working in the shop of his brother-in-law who is a kirana merchant. He also submits that generally shop owners sell jaggery and alum to customers, and the customers do not disclose for which

purpose they purchase jaggery and alum. It is his contention that if the purchasers use jaggery and alum for manufacture of illicit liquor, it cannot be found that the petitioner is responsible for selling the Jaggery and alum to such customers.

On the other hand, the learned Government Pleader appearing for the respondents contends that though the petitioner is entitled to approach under Section 482 of Criminal Procedure Code or Article 226 of the Constitution of India and seek quashing of crime registered against him, a writ petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor. She contends that inasmuch as there is prima facie material to show that the jaggery and alum seized in the crime is intended for manufacture of illicit liquor and the crime registered against the petitioner and other accused is under investigation, the petitioner cannot maintain a writ petition to quash the crime registered against him. In support of her contention, she relied on a Full Bench judgment of this Court in **Ganesh Traders, Dhermapuri, Karimnagar v. District Collector**, wherein it was held thus:

> "……
>
> a. The provisions of the A.P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;
>
> b. Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34(e) of the Excise Act.
>
> c. In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr.P.C. and/or Article 226 of the Constitution of India and seek quashing of proceedings provided his case come within well settled principles for quashing F.I.R., charge sheet or criminal case. However, a Writ Petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor.

d. ……”

In the light of the above Full Bench judgment of this Court and in view of the contention of the learned Government Pleader for Prohibition & Excise that there is prima facie material to show that the jaggery and alum seized in the crime is intended for manufacture of illicit liquor and the crime registered against the petitioner and other accused is under investigation, the contention of the learned counsel for the petitioner that a crime cannot be registered against the petitioner for mere selling of jaggery and alum to other accused in the crime, is not sustained. There are no merits in the writ petition.

The writ petition is accordingly dismissed. No costs.

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N.V. RAMANA, J

Date: 01-4-2005

Svv

..... REGISTRAR

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SECTION OFFICER

To

1 The Prohibition and Excise Superintendent
Nalgonda District at Nalgonda
2 The Prohibition and Excise Inspector
Prohibition and Excise Station, Suryapet,
Nalgonda Dist.

3 Two Ccs., to the Government Pleader for Prohibition & Excise, High Court Buildings, A.P., Hyderabad (OUT).

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